

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PAMELA PURPLE,

Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

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UNPUBLISHED

March 2, 2006

No. 257221

Jackson Circuit Court

LC No. 02-001850-NF

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying its motion for case evaluation sanctions pursuant to MCR 2.403(O). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of a car accident that occurred on August 3, 2000. Plaintiff filed a complaint on April 22, 2002, alleging breach of contract by defendant, her insurance company. The court ordered that mediation occur. Plaintiff rejected the mediation award, while defendant accepted it.

The case then proceeded to trial. After the trial court ruled against plaintiff on an evidentiary issue raised by defendant, plaintiff moved for an adjournment to secure the presence of a witness to cure her evidentiary problem. The court denied the motion, but granted plaintiff's alternative request to dismiss the case without prejudice. Defendant thereafter moved for case evaluation sanctions, which the trial court denied.

Defendant argues that the trial court erred in declining to order sanctions for plaintiff's rejection of the case evaluation award. Defendant claims that the order dismissing the case without prejudice was a "verdict" within the meaning of MCR 2.403(O)(2).

This Court reviews de novo a trial court's interpretation and application of a court rule, including the rule governing case evaluation sanctions. *Haliw v Sterling Heights*, 471 Mich 700, 704; 691 NW2d 753 (2005); *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 28; 666 NW2d 310 (2003). The court rule at issue, MCR 2.403(O), provides as follows:

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more

favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

(2) For the purposes of this rule “verdict” includes,

(a) a jury verdict,

(b) a judgment by the court after a nonjury trial,

(c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

In denying defendant’s motion for sanctions, the trial court relied in part on the language of the court rule and this Court’s decision in *Broadway Coney Island, Inc v Commercial Union Ins Cos (Amended Opinion)*, 217 Mich App 109, 113-115; 550 NW2d 838 (1996), which held that a dismissal *with* prejudice qualified as a “verdict” potentially subject to sanctions under MCR 2.403(O)(2)(c). The trial court ruled that, in contrast, a dismissal *without* prejudice does not constitute a “verdict” under the court rule.

This Court dealt with the definition of the word “verdict” in *Jerico Construction, Inc, supra*, 29. The Court applied the unambiguous language of the court rule and held in that case that a settlement agreement that resulted in a stipulated order of dismissal did not constitute a verdict, and that therefore, mediation sanctions were not proper. *Id.* at 29-31. In reaching that conclusion, the Court looked to *Johnson v State Farm Mut Automobile Ins Co*, 183 Mich App 752, 767-769; 455 NW2d 420 (1990), overruled on other grounds in *Devillers v Auto Club Ins Ass’n*, 473 Mich 562; 702 NW2d 539 (2005). *Johnson* involved a grant of summary disposition to the plaintiff before the beginning of trial but after mediation. *Id.* at 767. Instructive to this case, the Court in *Johnson* found that the order of summary disposition, which resulted in a dismissal of that case entirely, constituted a “verdict” within the meaning of MCR 2.403(O). *Id.* at 768-769.

Our Supreme Court in *Haliw, supra*, 703, further discussed the meaning of “verdict” in the context of a case in which a party sought appellate fees and costs under MCR 2.403(O). The Court stated in relevant part as follows:

Until this Court amended MCR 2.403(O) in 1997, it was sufficiently unclear whether a judgment that entered as a result of a dispositive motion instead of a trial would engender sanctions. By amending the court rule, this Court clarified that case evaluation sanctions may indeed be available when a case is resolved after case evaluation by a dispositive motion. [*Id.* at 708.]

Defendant here does not suggest that the trial court erred in granting plaintiff’s motion for dismissal without prejudice. The record reflects that in ordering the dismissal, the trial court intended to dismiss the case without prejudice and allow plaintiff to file the case again. Obviously then, the case was not dismissed in its entirety, unlike the summary disposition order in *Johnson, supra*.

Defendant argues that allowing sanctions in this case furthers the purpose of court rule. As stated in *Broadway Coney Island, supra*, 114, the purpose of the rule is “to encourage settlement and deter protracted litigation by placing the burden of litigation costs upon the party that required that the case proceed toward trial by rejecting the mediator’s evaluation.” Defendant points to no authority supporting the proposition that the purpose of the case evaluation sanction rule is to keep a valid claim from being litigated or to prevent a claimant from filing a claim altogether. If this Court allowed mediation sanctions for a case that may be appropriately refiled according to the trial court’s uncontested ruling, such would be the result.

Affirmed.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey